

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. **2010-660**

12 **SUSAN G. SWANN**
13 **aka SUSAN GAYLE SWANN**
14 **964 Nottingham Drive**
Corona, CA 92880

A C C U S A T I O N

15 **Registered Nurse License No. 345673**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about June 30, 1982, the Board of Registered Nursing issued Registered Nurse
24 License Number 345673 to Susan G. Swann aka Susan Gayle Swann (Respondent). The
25 Registered Nurse License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on August 31, 2011, unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a

1 license or otherwise take disciplinary action against a person who holds a license, upon the
2 ground that the applicant or the licensee has been convicted of a crime substantially related to the
3 qualifications, functions, and duties of the licensee in question, the record of conviction of the
4 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
5 and the board may inquire into the circumstances surrounding the commission of the crime in
6 order to fix the degree of discipline or to determine if the conviction is substantially related to the
7 qualifications, functions, and duties of the licensee in question.

8 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
9 'registration.'"

10 9. Section 2761 of the Code states:

11 "The board may take disciplinary action against a certified or licensed nurse or deny an
12 application for a certificate or license for any of the following:

13 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

14 "...

15 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
16 functions, and duties of a registered nurse, in which event the record of the conviction shall be
17 conclusive evidence thereof.

18 "..."

19 10. Section 2765 of the Code states:

20 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
21 charge substantially related to the qualifications, functions and duties of a registered nurse is
22 deemed to be a conviction within the meaning of this article. The board may order the license or
23 certificate suspended or revoked, or may decline to issue a license or certificate, when the time
24 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an
25 order granting probation is made suspending the imposition of sentence, irrespective of a
26 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person
27 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
28 of guilty, or dismissing the accusation, information or indictment."

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444, states:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

"(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

"(b) Failure to comply with any mandatory reporting requirements.

"(c) Theft, dishonesty, fraud, or deceit.

"(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445, states:

". . . .

"(5) Evidence, if any, of rehabilitation submitted by the applicant.

"(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

"(1) Nature and severity of the act(s) or offense(s).

"(2) Total criminal record.

"(3) The time that has elapsed since commission of the act(s) or offense(s).

"(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

"(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

"(6) Evidence, if any, of rehabilitation submitted by the licensee.

///

///

1 **COST RECOVERY**

2 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(May 28, 2008, Conviction for Shoplifting on April 18, 2008)**

8 14. Respondent is subject to disciplinary action under Code sections 490 and 2761,
9 subdivision (f) in that Respondent was convicted of a crime that is substantially related to the
10 qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

11 a. On May 28, 2008, in a criminal proceeding entitled *The People of the State of*
12 *California v. Susan Gayle Swann aka Susan Gayle Kearney aka Susan Gayle Robertson*,
13 Riverside Superior Court case number RIM514110, Respondent was convicted on her plea of
14 guilty of shoplifting in violation of Penal Code section 490.5, subdivision (a).

15 b. The facts that led to the conviction are that on April 18, 2008, Respondent entered the
16 Kohl's (Kohl's) store in Corona, California and was observed walking through the store with a
17 shopping cart containing various items including a Kohl's shopping bag. Respondent then went
18 into a dressing room and when she exited the dressing room she was carrying a Kohl's shopping
19 bag which had originally been in her cart. When Kohl's loss prevention personnel checked the
20 dressing room there were no items, only empty hangers. Respondent was then followed to the
21 customer service counter where she was observed returning an item, and paying for a few items,
22 then she exited the store. Kohl's loss prevention personnel detained Respondent. Respondent
23 admitted to stealing the items. The items recovered from Respondent that she did not pay for,
24 totaled \$401.87.

25 c. As a result of the conviction, Respondent was sentenced to 36 months of summary
26 probation, ordered to obey all laws, committed to the custody of the Riverside County Sheriff for
27 one day for booking purposes only, pay various fines and fees, and to submit to search at any time
28

1 by any law enforcement or probation officer. On December 5, 2008, the conviction was
2 expunged under Penal Code section 1203.4.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(May 14, 2009, Conviction for Shoplifting on March 19, 2009)**

5 15. Respondent is subject to disciplinary action under Code sections 490 and 2761,
6 subdivision (f) in that Respondent was convicted of a crime that is substantially related to the
7 qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

8 a. On May 14, 2009, in a criminal proceeding entitled *The People of the State of*
9 *California v. Susan Gayle Swann aka Susan Gayle Kearney aka Susan Gayle Robertson*, in
10 Riverside Superior Court, case number RIM531635, Respondent pled guilty and was convicted of
11 Penal Code section 484, a misdemeanor, with a prior theft conviction within the meaning of Penal
12 Code section 666. A second count for violation of Penal Code section 490.5, was dismissed.

13 b. The facts that led to the conviction are that on March 19, 2009, at the Kohl's store
14 located in Mira Loma, California, Respondent was observed by store personnel to come out of a
15 dressing room with less merchandise than she originally took into the dressing room, but her large
16 purse was larger and fuller than when she first entered the dressing room. Respondent was placed
17 under citizen's arrest by a Kohl's loss prevention manager and turned over to a Riverside County
18 Sheriff's officer.

19 c. As a result of the conviction, Respondent was sentenced to 36 months of summary
20 probation, ordered to obey all laws, committed to the custody of the Riverside County Sheriff for
21 10 days to be served on consecutive weekends or as authorized by RSO Weekender Program,
22 committed to the custody of the Riverside County Sheriff for one day for booking purposes only,
23 pay various fines and fees, submit to search and seizure by any law enforcement or probation
24 officer for any reason and to stay away from Kohl's.

25 ///

26 ///

27 ///

28 ///

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 345673, issued to Susan Gayle Swann;
2. Ordering Susan Gayle Swann to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

Ce/25/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SD2010800514
80457289.doc